S.B. CRIMINAL MISC. BAIL APPLICATION NO.1981/2006
(Siman Mecwan Vs. State)

Date of order : 17.5.2006

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. J.S. Choudhary, for the applicant.
Mr. Ashok Upadhyay, Public Prosecutor.
Mr. Pradeep Shah, for the complainant.

I have heard learned counsel for the applicant and learned Public Prosecutor for the State as well as the learned counsel appearing on behalf of the complainant and carefully gone through the impugned order.

It is contended by the learned counsel for the applicant that there was no negligence on the part of the applicant with regard to treatment of deceased – Smt. Mamta. Further, it is contended that operation of DNC was conducted by the applicant after obtaining her consent and the allegations levelled against the applicant are totally false.

Learned counsel for the applicant while has inviting the attention of this Court towards the decision rendered by Hon'ble Supreme Court in case of Jacob Mathew Vs. Sate of Punjab & Anr., reported in AIR 2005 SC 3180 wherein it has been held that essential components of negligence are three : duty, breach and resulting damage, contended that all these

three components are absent in the present case and the applicant was not negligent towards his duties. He has also invited the attention of this Court towards another decision rendered by Hon'ble Supreme Court in case of Dr. Suresh Gupta Vs. Govt. of N.C.T. Of Delhi & Anr., reported in AIR 2004 SC 4091.

Learned Public Prosecutor as well as learned counsel appearing on behalf of the complainant opposed the bail.

It is contended by the learned counsel for the complainant that a bare perusal of the contents made in the FIR itself goes to show that offence under Section 314 I.P.C. is made out and the said offence is non-bailable offence. Further, it is contended that before conducting the operation, no consent was obtained from the deceased.

Learned Public Prosecutor contended that there is no document on case-diary with regard of taking consent from the deceased before conducting the operation. It is also contended that in the investigation, it was found that there was negligence on the part of the applicant.

I have perused case diary as well as both the judgments cited by the learned counsel for the applicant.

Looking to the facts and circumstances of the case, I am not inclined to grant anticipatory bail to the applicant. Accordingly, the application for anticipatory bail stands rejected.

(GOPAL KRISHAN VYAS), J.

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